

## **REMARKS**

Applicants acknowledge receipt of an Office Action dated March 14, 2007. In this response, Applicants have canceled claims 22 and 25 without prejudice or disclaimer in order to expedite prosecution of the present application by reducing the number of issues to be considered by the PTO. In addition, Applicants have amended claim 1, amended claim 3 so that it depends from claim 1, redrafted claims 14 and 24 in independent form, and added independent claim 26. Following entry of these amendments, claims 1, 3-21, 23-24, and 26 are pending in the application.

Claims 4-8, 10-12, 18, and 19 have been withdrawn from consideration as being directed to non-elected species. Accordingly, claims 1, 3, 9, 13-17, 20-21, 23, 24, and 26 are currently pending and under consideration. At least claims 1, 13, and 26 are generic.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **Allowable Subject Matter**

As an initial matter, Applicants wish to thank the PTO for its indication, on page 4 of the Office Action, that claim 24 would be allowable if rewritten in independent form. In this response, Applicants have redrafted claim 24 in independent form.

### **Rejection Under 35 U.S.C. §112, 1<sup>st</sup> Paragraph**

On page 2 of the Office Action, the PTO has rejected claim 22 under 35 U.S.C. §112, 1<sup>st</sup> Paragraph as allegedly failing to comply with the written description requirement. Although Applicants respectfully traverse this rejection and reserve the right to pursue the subject matter of claim 22 in a continuing, divisional, or reissue application, in the interest of expediting prosecution of the present application, Applicants have cancelled claim 22 without prejudice or disclaimer. Accordingly, the rejection of claim 22 under §112 is now moot.

### **Rejections Under 35 U.S.C. §102**

On page 3 of the Office Action, the PTO has rejected claims 1, 3, 9, 16-17, 20-22, and 25 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent 5,236,042 to Kado

(hereafter “Kado”). In addition, and also on page 3 of the Office Action, the PTO has rejected claims 1, 3, 9, 16-17, 20-22, and 25 under 35 U.S.C. §102(b) as allegedly being anticipated by JP 2001-280884 to Watanabe (hereafter “Watanabe”). Applicants respectfully traverse these rejections for the reason set forth below.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP §2131.

Here, Kado and Watanabe each fail to disclose “a single collection manifold which is in fluid communication with all the flat tubes and which comprises both a fluid inlet and a fluid outlet” as recited in independent claim 1. For at least this reason, Applicants submit that neither Kado nor Watanabe can properly anticipate claim 1 or any claim depending therefrom.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections under §102.

### **Rejection Under 35 U.S.C. §103**

On page 4 of the Office Action, the PTO has rejected claims 13-15 and 23 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kado or JP Publication No. 2001-280884 to Watanabe (hereafter “Watanabe”) in view of U.S. Patent 6,272,881 to Kuroyanagi *et al.* (hereafter “Kuroyanagi”). Applicants respectfully traverse this rejection for the reason set forth below.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Here, the cited references, namely Kado, Watanabe, and Kuroyanagi, whether taken individually or in combination, fail to teach or suggest “wherein the end of at least one of the

flat tubes is provided with a slot for receiving a partition wall; and wherein the slot is formed in the outer contour of the respective flat tube that at least partially matches an internal contour which represents the collection manifold” as recited in claim 14 (which Applicants have redrafted in independent form in the amendment above).

Applicants note that, in rejecting claim 14, the PTO has referred to Figure 18 in Kuroyanagi; however, Figure 18 of Kuroyanagi does not show a slot and certainly does not show a slot which “is formed in the outer contour of the respective flat tube that at least partially matches an internal contour which represents the collection manifold” as recited in claim 14.

With regard to the rejection of claim 13, Applicants submit that any attempt to combine Kado or Watanabe with Kuroyanagi would result in an unworkable combination inasmuch as the flat tubes of both Kado and Watanabe are not configured for use with the header of Kuroyanagi.

For this reason, Applicants submit that the outstanding rejection of claim 14 is improper and ought to be withdrawn. Applicants note that claims 15 and 23 depend from claim 14 and are allowable for at least the same reason as claim 14.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under §103.

#### **Newly Added Claim 26**

In this response, Applicants have added claim 26. Applicants submit that none of the references cited in the outstanding rejections, taken either individually or in any permissible combination, disclose, teach, or suggest a heat exchanger where “at least one end of at least one flat tube is provided with a rectangular opening.”

#### **CONCLUSION**

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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